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## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

## Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

## FINCH et al. v. GARRETT.

Jan. 14, 1909.

[63 S. E. 417.]

**1. Contracts (§ 97\*)—Validity—Assent—Estoppel—Ratification.**—The right to repudiate a contract for fraud is waived by enjoying its benefits after discovering the fraud.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 442-446; Dec. Dig. § 97.\*]

**2. Landlord and Tenant (§ 34\*)—Rescission—Laches.**—An unexplained delay of seven years in repudiating a lease for fraud after learning the facts precluded the lessee from maintaining an action to rescind the lease.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. § 97; Dec. Dig. § 34.\*]

## NORFOLK &amp; P. TRACTION CO. v. WHITE.

Jan. 14, 1909.

[63 S. E. 418.]

**Street Railroads (§ 98\*)—Injuries to Person on Track—Contributory Negligence.**—Where plaintiff had lived near the point at which he was injured by a street car for a number of years, and the point at which his friends were to take the car was not a regular stopping place, and he knew that the car would not stop except on signal, and they knew that it might be momentarily expected, and he saw it a short distance from the crossing, and, that he might give the signal, stooped to strike a match on the rail, and in so doing projected his head over the track so that it was struck, he was guilty of contributory negligence.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig. § 98.\*]

## HALL v. HALL et al.

Jan. 14, 1909.

[63 S. E. 420.]

**1. Trusts (§ 134\*)—Trust Deed—Delivery—Operation.**—A deed,

\*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

conveying personal estate to trustees to collect the income for the benefit of the grantor for life, and at his death to distribute the corpus to designated persons, operated, when executed, acknowledged for registry, and delivered by the grantor to one of the trustees and accepted by him without condition, to divest the title of the grantor, and to invest it in the grantees, on the trusts and for the uses designated.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 177; Dec. Dig. § 134.\*]

**2. Wills (§ 88\*)—Will Distinguished from Deed.**—An instrument which purports to be a deed, whereby one conveys personal estate to trustees to collect the income for the benefit of the grantor for life, and to distribute the corpus to designated persons on the grantor's death, is a deed, and not a will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 208-217; Dec. Dig. § 88.\*]

**3. Descent and Distribution (§ 52\*)—Rights of Surviving Wife—Conveyances of Personal Estate by Husband.**—A conveyance by a husband, whereby he parts absolutely with personal property and vests the same in trustees to collect the income for his benefit for life, and to distribute the corpus to designated persons on his death, is valid to bar the wife of her distributive share therein, though a husband cannot defeat his wife's claim to her distributive share by will.

[Ed. Note.—For other cases, see Descent and Distribution, Cent. Dig. § 152; Dec. Dig. § 52.\*]

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TIDEWATER RY. CO. *v.* HURT.

Jan. 14, 1909.

[63 S. E. 421.]

**1. Pleading (§ 417\*)—Review—Parties Entitled to Allege Error—Estoppel.**—When a demurrer to a bill is sustained with leave to amend, if the plaintiff exercises that privilege, he cannot object to the decree sustaining the demurrer.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1401; Dec. Dig. § 417.\*]

**2. Specific Performance (§ 6\*)—Contracts Enforceable—Mutuality.**—A contract to convey land to a railroad company for a right of way, is not lacking in mutuality because it contains an introductory recital that, "Whereas [the railroad company] proposes to build a line of railway," etc., where it is obvious that the recital is not a covenant to build a railroad, which covenant could not be specifically enforced, but only a representation as an inducement to the contract, the truth

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\*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.